UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

ROBERT CROWELL, a sole proprietorship
d/b/a ARMCO MASONRY

and

Cases 7-CA-47293
7-CA-47470
7-CA-47872

LOCAL 9 MICHIGAN, INTERNATIONAL UNION
OF BRICKLAYERS AND ALLIED CRAFTWORKERS,
AFL-CIO

Michael P. Silverstein, Esq., for the General Counsel.
John G. Adam, *Esq*., of Royal Oak, Michigan, for the
Charging Party.

DECISION

STATEMENT OF THE CASE

MARK D. RUBIN, Administrative Law Judge. This case was tried in Detroit, Michigan, on December 6, 2004,[1] based on charges filed on March 18, May 11, and September 13 by Local 9 Michigan, International Union of Bricklayers and Allied Craftworkers, AFL–CIO (Charging Party or Union), against Robert Crowell, a sole proprietorship d/b/a Armco Masonry (Respondent or Employer).

The Regional Director's second consolidated amended complaint, dated October 27, alleges that the Respondent violated Section 8(a)(3) of the Act by refusing to hire or consider for hire nine named individuals[2] because of their membership in the Charging Party, violated Section 8(a)(5) by refusing to pay employee Michael Strouse for work he performed from March 29 to April 13, by failing and refusing to provide the Charging Party with certain requested information, and by failing and refusing to meet for collective bargaining, and violated Section 8(a)(1) by various alleged statements which assertedly constituted threats, coercive interrogation, and were otherwise coercive of Section 7 rights. Respondent failed to appear at the hearing,[3] either in person or otherwise, and, hence, presented no evidence or defense at the

[1] Unless indicated to the contrary, all dates refer to 2004.

[2] Nelson McMath, Darrel Nichols, Guy Perriard, Wendell Albertson, Bob Bowinski, Tony Marr, Don VanArsdelan, Casey Rapplejay, and Robert Taylor. I note that the spelling of some of the names sometimes appears differently in the complaint, transcript, and exhibits. For consistency, I have used the spellings as they appear in the complaint.

[3] The hearing opened at 11 a.m. on December 6, and closed at 3:55 p.m. Neither the

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hearing.[4] The issues presented here are, thus, whether the General Counsel proved the allegations of the complaint, and whether the substantive allegations constituted violations as set forth above.

At the trial, the parties were afforded a full opportunity to examine and to cross-examine witnesses[5], to adduce relevant and material evidence, to argue their positions orally, and to file post-hearing briefs. On the entire record, including my observation of the witnesses, and after considering the brief of counsel for the General Counsel, the only brief filed, I make the following

Finding of Fact

I. JURISDICTION

Respondent, a sole proprietorship, maintains an office and place of business in Spokane, Missouri, where it has been engaged in the building and construction industry as a masonry contractor. Beginning about January 21 and until April 13, Respondent performed work and services valued in excess of $500,000 at a Sam's Club construction jobsite in Pittsfield Township, Michigan, where it had been engaged in the installation of masonry block and brick for said construction.[6] There is no evidence that the Respondent maintained any other

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Respondent nor its counsel appeared at any time during the proceeding. Counsel for the General Counsel stated on the record that about 2 weeks prior to the hearing he had a conversation with the Respondent's then counsel of record and that shortly after the conversation the Regional Office received a letter from said counsel withdrawing from representation of the Respondent. Counsel for the General Counsel also stated on the record that about a week prior to the hearing he spoke to the Respondent's owner, Robert Crowell. According to counsel for the General Counsel, Crowell told him that he would not participate in the normal prehearing conference with the administrative law judge. Counsel for the General Counsel further stated that he left about six additional telephone messages for Crowell, including specifically asking whether Crowell would be present for the hearing, but received no response. There can be no doubt that Respondent was aware of the scheduled hearing as its counsel of record on November 10 filed an answer to the Regional Director's second order consolidating cases, second consolidated amended complaint, and notice of hearing, which document set the hearing for 11 a.m. on December 6 at the Regional Office.

[4] Respondent sets forth seven affirmative defenses in its answer, including waiver, laches, Sec. 10(b) statute of limitations, economic motivation, and Sec. 8(c). As Respondent failed to appear at the hearing, no evidence was presented in support of any of the defenses. To the extent not otherwise discussed in the decision, I reject all of these defenses as unsupported by evidence or law.

[5] Counsel for the General Counsel presented four witnesses at trial, including the Charging Party's attorney, John G. Adam. While there was no cross-examination of the witnesses as Respondent chose not to appear at the trial, all testified with apparent excellent recollection of the events they testified about, and with demeanor that suggested they understood the significance of testifying under oath. In sum, I find all four witnesses credible, and credit their testimony. My findings of facts are, thus, based on the testimony of these witnesses and the exhibits admitted to the record.

[6] These findings, except for the value of Respondent's services, were admitted in Respondent's answer. The value of Respondent's services is based on the testimony of Union Field Representative Mike Lynch. Lynch, with 22 years of experience in the masonry field, testified that based upon his review of the "Dodge Report" for the jobsite which listed the total

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presence in the State of Michigan other than the substantial work performed at the Sam's Club jobsite.

In its answer to the complaint, Respondent admitted that "at all material times it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act." Further, on March 15, 2004, in a decision issued in Case 7–RC–22622, it was found that the Respondent "is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein." Accordingly, I find, based on Respondent's admission, and on the jurisdictional findings in the decision in Case No. 7–RC–22622 which issued less than 9 months prior to the trial herein, the certification of the Union in the representation case, and the failure of Respondent to present any contrary evidence that, in fact, the Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. See, *Spring Valley Farms, Inc*., 274 NLRB 643 (1985), and *Maximillion Cruises, Inc*., 329 NLRB 137 (1999).

II. Labor Organization

I find, and it is admitted by Respondent, that Local 9 Michigan, International Union of Bricklayers and Allied Craftworkers, AFL-CIO, is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. Alleged Unfair Labor Practices

A. Respondent hires Michael Lynch

In January, an article or an advertisement[7] appeared in a local newspaper stating that the Respondent was seeking to employ bricklayers and laborers in the Ann Arbor area. About January 21, Michael Lynch, a field representative for the Union, called the phone number listed in the advertisement and spoke to "Denise" who told Lynch that she worked for the Respondent. Lynch told Denise that he was a bricklayer looking for work, and she referred Lynch to "Larry", who Lynch spoke to later that day.[8] Larry identified himself as one of Respondent's owners,

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square footage of the construction as 132,732, he estimated the cost of the total construction project as between $5,000,000 and $10,000,00, and that, in his experience, the masonry work on a solid masonry building, such as the Sam's Club construction, represented about 10 percent of the estimated total project cost. In making this finding, I also note that Respondent, which did not appear at the hearing, failed to comply with counsel for the General Counsel's timely subpoena of November 18, seeking jurisdictional information and documents. See *J.E.L. Painting and Decorating, Inc*., 303 NLRB 1029 (1991).

[7] Lynch testified that he first heard of Respondent when he saw an "article" sometime near the end of January in the Ann Arbor News which stated that Respondent was looking for bricklayers and laborers for work in the Ann Arbor area (the general area of the jobsite here). Counsel for the General Counsel's subsequent questions to the witness referred to the "article" as an "ad." Subsequently, Lynch neither referred to the article as an advertisement, nor disagreed with counsel for the General Counsel's characterization of the article as an advertisement. The "article" or "ad" was not introduced. There is, thus, insufficient evidence from which I can determine whether, in fact, the item in the newspaper was an advertisement placed by Respondent or an article written by a reporter.

[8] I find that Larry Saunders is a supervisor within the meaning of Sec. 2(11) of the Act and an agent of Respondent within the meaning of Sec. 2(13) of the Act. While Larry did not use his last name in this conversation, he referred Lynch to the jobsite for hire, and identified himself to

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and Lynch told Larry that he was an experienced mason and would like to work for Respondent. Lynch said nothing about his union affiliation, and Larry did not ask. Larry told Lynch that he could go to the jobsite and speak to supervisors "Rick and Dan," who would probably put Lynch to work. Lynch asked if the Respondent needed any more bricklayers, and Larry told him he could bring a partner.

The next morning Lynch, accompanied by fellow union member and bricklayer Todd Hecht, traveled to the jobsite and spoke on the jobsite with Rick Butler,[9] who identified himself as Respondent's superintendent on the jobsite, and Mike Powers, who identified himself as running Respondent's crew on the scaffold. Respondent had no trailer on the jobsite, other than for equipment storage, so the conversation took place outdoors. Butler told Lynch and Hecht that they would be paid $20 per hour and that they would be working 10 hours a day, 6 days a week. Butler assigned Lynch and Hecht to a work crew and they began work that day. Later that day Lynch told Butler that he knew other masons and asked whether he would need more help on the job. Butler told Lynch that he would need more masons, that the job was on a tight schedule. Neither Lynch nor Hecht disclosed their union affiliation nor filled out job applications or any other paperwork that day, although Hecht about a week later completed a form calling for his address, and may or may not have filled out a W-2 form.[10] The Respondent never required Lynch to complete any type of forms or paperwork.

B. Union Members' Visits to Jobsite; Alleged Refusal to Hire

On the morning of January 26, both of Respondent's crews jointly met for about 15 minutes on the jobsite with Dan Dane[11] and Butler. Dane warned employees about missing time on the job, and threatened discharge for tardiness. Dane then told the gathered employees that he had heard the Union was coming that day and the employees were not to speak to "them." Dane told the employees that they were to stay under the tarpaulins they had

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Lynch as one of the owners of the Respondent. I further note that Respondent failed to comply with counsel for the General Counsel's subpoena which sought detailed information as to Saunders' duties, authority, and responsibilities.

[9] I find Butler to be a supervisor of Respondent within the meaning of Sec. 2(11) of the Act, and an agent of Respondent within the meaning of Sec. 2(13) of the Act. Thus, Butler hired Hecht and Lynch, set their wages, and gave them their work assignments, all indicia of supervisory authority.

[10] Hecht testified; "I think it was a W-2 that I had to fill out for – I don't know if I did or not."

[11] I find Dane to be a supervisor of Respondent within the meaning of Sec. 2(11) of the Act, and an agent of Respondent within the meaning of Sec. 2(13) of the Act. While Respondent, in its answer, denies the complaint's pleading as to the supervisory and agent status of Dane, along with Butler, Larry Saunders, and Robert Crowell, it admits complaint par. 9 which alleges that Dane, as an agent of Respondent, engaged in certain actions violative of Sec. 8(a)(1). Par. 9 of the complaint contains the only substantive assertion involving Dane. So, whatever Respondent meant by the general denial but specific admission, it is clear that at least for the purpose of the pleading in par. 9 there is no dispute that Dane is a Sec. 2(11) supervisor and 2(13) agent. Further, Hecht credibly testified that Dane was in charge of Respondent's crew of laborers at the jobsite and Lynch credibly testified that Dane threatened Respondent's work crews with discharge for tardiness. Finally, I note that Respondent failed to comply with counsel for the General Counsel's subpoena seeking detailed information as to the duties, authority, and responsibilities of Dane, Butler, Crowell, and Saunders.

been working under because of the winter weather,[12] and that Dane and Butler would keep the Union from getting to them because they would be working under the tarpaulins.

Later that morning a group of union bricklayers, led by Union Field Representative[13] Nelson McMath, a journeyman bricklayer, arrived at Respondent's jobsite.[14] Besides McMath, the group included journeymen bricklayers[15] and union members Casey Rapelje, Wendell Albertson, Robert Bowinski, Robert Taylor, Don Van Arsdelan, Tony Marr, and Guy Perriard.[16] Many in the group, including McMath, were wearing hardhats with decals of the Union. Butler, in his truck, met the group by the entrance to the jobsite. One of the Union journeymen videotaped the encounter with Butler.[17] McMath asked Butler if he was the person hiring masons for the job, and whether he was going to need help. Butler asked, "Are you all with the union?"[18] McMath responded, "Yeah, but more importantly we were looking for work at that time because we were all – everybody was laid off." Butler told McMath that the weather had confined him as to moving out on the job, and he needed a couple more days "to prepare for more help." McMath told Butler that all of the men had "plenty of experience in the trade." McMath asked Butler whether the group should come back to the site, or whether they should leave a phone number, or take Butler's phone number. Butler responded that the group needed to go to LaSalle, the general contractor/construction manager, to see about getting hired.

McMath, accompanied by the group, walked about 200 yards to the LaSalle trailer on the jobsite. McMath told LaSalle superintendent Al De Fauw that they were told to see him about being hired by the Respondent. DeFauw responded that Respondent was doing all of its own hiring, and they needed to talk to Respondent. McMath and the group returned to the jobsite entrance and again spoke to Butler, who was in his truck. McMath told Butler what De Fauw had said, and McMath again asked how the men should go about being hired by Respondent. Upon being asked this by McMath, Butler exited the truck and said, "if you just throw your f------ union cards out, maybe you can get a job around here." At some point in the conversation, McMath asked about job applications. Butler responded that he did the hiring, and that "not a man on this site filled out an application."

Shortly after the group led by McMath left the jobsite, Butler and Dan Dane, at about 10 to 11 a.m., climbed the scaffold to where a crew was working under the tarpaulin. Dane, with

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[12] Respondent utilized a tarpaulin to cover the scaffolding the crews were working on, to protect employees from the Michigan winter weather.

[13] McMath became president of the Union on October 1, 2004. Previously, for 11 years, McMath was employed as the Union's field representative. McMath has been a member of the Union for 29 years.

[14] McMath testified that Lynch had told him earlier that Respondent was "in need of manpower."

[15] McMath testified that in his capacity as president of the Union, and formerly field representative of the Union, he was familiar with all of the individuals in the group, and they were all members of the Union and journeymen. In order to qualify as a journeyman bricklayer, the Union requires 3 years or 4500 hours of on the job training as an apprentice.

[16] This finding is based on the credited testimony of McMath. Counsel for the General Counsel's brief asserts that Gary McQuaid and Darrell Nichols were also in this group with McMath, and cites McMath's testimony in support. McMath did not so testify.

[17] McMath testified that they decided to videotape the conversations as Lynch had mentioned to McMath that he thought Butler had a volatile personality.

[18] It is not clear whether the "you all" reference was meant to refer to all the members of the group, or was a colloquial reference to McMath.

Butler present, told the crew, including Lynch, that it was a nonunion jobsite, that Respondent was not going to hire any union people off the street and that "if the union guys burn their cards, maybe they could get a job." Butler added that Respondent was not "going to hire any of them union pricks."[19] As Lynch was leaving work that day he told Butler that he "had a couple of buddies that were going to be out of work in a couple of days" and asked Butler if he was going to be doing any more hiring. Butler responded that "maybe in a couple of days he would be looking for more bricklayers."

On January 29, the same group of union journeymen with the addition of Union journeymen Gary McQuaid and Darrel Nichols, and again led by McMath, visited the jobsite. As they entered the site, Butler drove up in his truck. Butler said, "You need to get the f---- out of here. I'm calling the police." McMath responded, "Look, we're just here to find out how we can get hired on this job." About 20 minutes later the police arrived.[20] There was no further conversation between McMath and Butler, but others in the group began distributing handbills to Respondent's employees on the site, with information as to the Union's current collective-bargaining agreement wage rates and benefits.

While the McMath group was on the site, Dane climbed the scaffolding and told the crew that Respondent was not going to do any hiring off the street, that it didn't "want any union people on there, this is a non-union site." Dane told the crew they were not to speak to the men in the group visiting the site. As Lynch was leaving the site at the end of the work day, he saw Butler and Dane sitting in Butler's truck, watching the Union group passing out leaflets. As Lynch was checking out with Butler and Dane for the day, he told them that a couple of his friends had finished up their work, and asked if they needed any help. Butler said to "go ahead and bring my men in, that, you know, he can come to work, they're not going to do any hiring off the street, they don't want any union people on the site." [21]

On January 30, Lynch reported to work at the beginning of his shift, and brought with him journeyman bricklayer Chris Fraim, a fellow member of the Union. Lynch checked in with Butler and introduced Fraim to him as "…the guy that you told me to bring in." Butler said, "Okay," and told them where to go to work.[22] At the end of the day Lynch, Hecht, and, apparently, Fraim quit their jobs with Respondent.[23]

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[19] This finding is based on the credited testimony of Lynch. Todd Hecht testified to hearing Butler and Dane make similar statements under the tarpaulin after the McMath group left the jobsite, but placed the conversation in the afternoon. I credit Lynch as to the time of the conversation as Hecht seemed unsure of the exact time.

[20] There is no evidence as to what action, if any, the police took. Counsel for the General Counsel, citing McMath's testimony, asserts in his brief that, "…the police appeared and asked the Union bricklayers to leave Respondent's jobsite." McMath did not so testify.

[21] Counsel for the General Counsel, citing Lynch's testimony, asserts in his brief that Butler told Lynch to bring his friends to the jobsite "the next day." Lynch did not so testify.

[22] Counsel for the General Counsel, citing Lynch's testimony, asserts in his brief that Fraim "…did not volunteer his union affiliation to Butler and Dane," and that, "…Butler and Dane put Fraim to work alongside Lynch and Hecht without inquiring as to his Union membership." But, Lynch's entire testimony as to any conversation with Butler that morning is as follows: "I checked in with Rick like you do every morning and introduced Chris Fraim to him and said this is the guy that you told me to bring in. He said okay. Told us where to work."

[23] Lynch and Hecht testified that they quit Respondent's employ on January 30. There is no direct evidence as to whether Fraim also quit, but the context of the testimony makes it appear that he only came to work on January 30, with Lynch.

C. NLRB Petition, Election, Certification

The Union, on February 6, filed a representation petition in Case 7–RC–22622 seeking to represent Respondent's bricklayers. On March 15, the Regional Director issued a decision and direction of election finding that the following group of Respondent's employees constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: all full-time and regular part-time bricklayers employed by the employer working at or out of its facility in Spokane, Missouri; but excluding office clerical employees, operators, carpenters, laborers, managerial employees, and guards and supervisors as defined in the Act. Additionally, in his decision, the Regional Director found that "the employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein." No request for review of the decision was filed with the Board. Respondent abandoned the jobsite[24] after work on April 13, the day before the Board conducted election. Nevertheless, the Board conducted the election, as scheduled, on April 14, with a lone employee voting, Michael Strouse. The Regional Director issued a "Certification of Representative" to the Union on April 22.

D. Information and Bargaining Requests

Following the Union's certification, the Union's attorney, John G. Adam, on April 22 mailed and faxed[25] a letter to Respondent,[26] and to Respondent's attorney, Peter J. Quist, requesting to meet for collective bargaining, and also requesting certain information. The information request sought the following for bargaining unit employees: current terms and conditions of employment including wage rates, benefits, hours, etc.; the names, dates of hire, hourly wage rate, benefits, and total hours of work in 2004; personnel files for bricklayers employed in 2004; details and documents as to discipline in 2004; location of current work including name and address of general contractor; location of new jobs and expected start date; names of all supervisors and company officials; evidence of workers' compensation insurance; and the names, addresses, and nature of other businesses operated by owners of Respondent. Adam, in the letter, asserted that Respondent left the State of Michigan, "the night before or early morning hours of April 14," and requested the following information relevant to the departure: the names of employees who had not received their last paychecks; the names of all unit employees who performed work on April 12 and 13, and whether they had been paid; the reason why the Respondent departed; information as to the names of all employees, whether such employees had been paid all monies owed to them, and an "inventory" or copies of all checks issued to employees in April.

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[24] Respondent, while on the jobsite, typically employed 15 bricklayers and 10 laborers.

[25] Adam also sent the letter by e-mail to Quist. The letters were not sent by certified mail, but Adam never received the letters back from the Postal Service marked "undeliverable."

[26] All of Adam's correspondences to Respondent were addressed to both Robert Crowell and Larry Saunders at Respondent's offices in Spokane, Missouri. The complaint pleaded that Crowell is the owner of Respondent, and a supervisor within the meaning of Sec. 2(11) and agent within the meaning of Sec. 2(13). In its answer, Respondent admits that Robert Crowell d/b/a Armco Masonry is a sole proprietorship. I further note that Respondent failed to comply with counsel for the General Counsel's subpoena seeking books, records, and documents detailing Crowell's duties, authority, and responsibilities. Under these circumstances, with Respondent's answer admitting that Crowell operates Respondent as a sole proprietorship, and with Respondent failing to provide the subpoenaed materials, I conclude that, in fact, Crowell is a 2(11) supervisor and 2(13) agent of Respondent.

Additionally, in the letter, Adam mentioned that the Union had many qualified bricklayers, and inquired as to Respondent's hiring process as follows: whether Respondent utilized job applications; what phone number job applicants should call; and whether Respondent was currently hiring bricklayers and for what job and location. Finally, Adam asked whether the Respondent remitted Federal and Michigan taxes on all unit employees. Adam closed the letter as follows: "You do not have to answer all these questions at once and we would like a prompt reply and if you need more time for some of the request please let me know." Adam received no responses to the letters or message.

On April 30, Adam mailed and faxed a letter to the Respondent[27] and to its lawyer Quist, asking, "When can I get a reply to my April 22 letter?" On May 4, Adam received a voice mail message from Quist stating that, essentially, there was nothing to bargain over, that the Respondent had contracted out the work and, "…we couldn't collect dues." When Adam received the voice mail he immediately returned the call, and left a voice mail message for Quist telling Quist that he was concerned about Quist's message about contracting out the work and bargaining, that Adam still wanted responses to his information request, and that the Union wanted to bargain.

Later on May 4, Adam sent a letter to Quist, also faxing a copy, telling Quist that, "Your voice mail message stated that you wanted to 'let me know' that to your knowledge your client 'has no further employees' and 'they basically' are into the 'contracting business'…." In the letter, Adam notes that, "I returned your call and left a message advising that [the Union] wants the information and documents sought in my April 22 letters." Finally, in the letter, Adam makes the following additional information request: "[W]hen did Armco decide to 'contract' out the work and why? What happen [sic] to the employees that were on the Excelsior List? Are any of those employees on the Excelsior List doing the work as a contractor for Armco? To whom is the work being contracted out since April 13, 2003 [sic]? Please provide the name of the contractor and the job location. Has any officer or supervisor of Armco set up or created another business or have another business?" Quist never sent a response to the letter.

On August 27, Adam, on behalf of the Union, wrote to Respondent and to Quist as to a stopped paycheck issued to employee Michael Strouse, and requested certain information. In the letter, Adam asked when and why Respondent stopped payment on Strouse's paycheck, and also requested information as follows: "In addition, we understand that Armco is operating and continues to operate. Please list all jobs since May 1, 2004, to the present and the names and addresses of all unit employees, their pay and benefits and the location of the jobs." Adam credibly testified that neither Respondent nor Quist responded to his August 27 letter.

E. Respondent's Failure to Pay Employee Michael Strouse

In early February, union member Michael Strouse began working for Respondent at the Sam's Club jobsite as a bricklayer.[28] About April 9, Strouse received a paycheck from Armco

[27] Addressed to Robert Crowell and Larry Saunders, at Respondent's office in Spokane, Missouri.

[28] The only record evidence as to Strouse's day of hire consists of a "Claim of Lien" Strouse filed against Respondent which asserts "Notice is hereby given that on or about February 5, 2004, Michael Strouse…an employee of Armco Masonry, first provided labor (bricklayer) for improvement to the real property with the legal description set forth in attachment A. Labor was last provided by the employee on Tuesday, April 13, 2004." The lien was signed by the

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for $792.79 for work performed the week ending April 2. After Strouse cashed the check, Respondent stopped payment on the check, and Strouse received a notice to such effect on June 24, 2004, along with a demand from Mr. Check Inc. to repay the amount of the check, along with a service charge of $150. On August 27, Adam sent a letter to Respondent and to Quist, enclosing a copy of the stopped check and the demand from Mr. Check, and asserting that Respondent improperly stopped Strouse's paycheck. In the letter, Adam asked when and why this happened, and whether Respondent was going to issue Strouse a new check. Also in the letter, Adam asserts that the Respondent continues to operate and requests information as follows: "Please list all jobs since May 1, 2004 to the present and the names and addresses of all unit employees, their pay and benefits and the location of the jobs." Adam received no response to this letter.

Strouse also called Adam in early May, complaining to Adam that the Respondent had not paid him for his final week of work, apparently the week of April 5, and the days of April 12 and 13, immediately before Respondent left the Sam's Club jobsite. On May 7, Adam, on behalf of Strouse, filed a claim of lien stating that, "claimant was not paid for the work week of April 5 or the week of April 12 and 13. There is due and owing to or on behalf of the laborer the sum of $1,460 for which the laborer claims a construction lien upon the above-described real property." Adam served the lien on site owner Wal-Mart stores, general contractor LaSalle Construction, Inc., and surety Willis Corporation. Strouse still has not been paid.

IV. Analysis and Conclusions

A. Appropriate Unit

The complaint alleges that the following unit of Respondent's employees is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: "All full-time and regular part-time bricklayers employed by Respondent at or out of its facility in Spokane, Missouri; but excluding office clerical employees, operators, carpenters, laborers, managerial employees, and guards and supervisors as defined in the Act." Respondent, in its answer, denies that such unit is appropriate.

Inasmuch as Respondent did not appear at the trial nor file a brief, no argument or evidence was presented in support of its denial. However, any representation issue Respondent seeks to raise here was, or could have been, litigated in the prior representation proceeding. The Respondent does not offer to adduce any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the reexamination of the decision made in the representation proceeding. I, therefore, find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941), and *Leisure Chateau Care Center*, 330 NLRB 846 (2000). Accordingly, I find the unit pleaded in the complaint, and set forth above, the same unit found appropriate in the prior representation case, constitutes a unit appropriate for the purposes of bargaining within the meaning of Section 9(b) of the Act.

Charging Party's counsel, John G. Adam. I also note that Respondent failed to comply with counsel for the General Counsel's subpoena which requested numerous documents which could have provided significant further evidence as to Strouse's employment by Respondent, and Respondent's failure to pay Strouse.

B. The 8(a)(1) Allegations[29]

The complaint alleges as 8(a)(1) violations, that on January 26, Butler and Dane coercively interrogated job applicants, told applicants that if they threw away their union cards they would be able to get jobs, informed Respondent's employees that it was not going to hire union members and threatened that if union members came back to the jobsite to apply for jobs, the police would be called and the union members arrested. In fact, during the morning of January 26, Butler told the group of journeymen led by McMath, that if they threw away their union cards Respondent might hire them. I conclude that telling these journeymen, who were inquiring about employment, that they could only be hired if they, in effect, quit the Union, is coercive of their Section 7 rights and violates Section 8(a)(1). *Parks International Corp*., 339 NLRB 285 (2003). I also conclude that Dane's comments to Respondent's work crews on January 26 that the Union was coming to the jobsite and they were not to speak to them, that the jobsite was nonunion and Respondent was "not going to hire any union people off the street," but if the "union guys burn their cards maybe they could get a job," are coercive of Section 7 rights and violate the Act. Similarly, Danes' comments to Respondent's work crews on January 29 that Respondent was "not going to do any hiring off the street, they don't want any union people on there, this is a non-union site," and Butler's January 29 comments to McMath threatening to call the police are coercive of Section 7 rights, and violate the Act.

But, I also conclude that Butler's January 26 questioning of McMath and the group of journeymen seeking employment by Respondent was neither coercive nor violative of Section 7 rights. It is true, as posited by counsel for the General Counsel, that the Board normally finds the interrogation of an applicant during an interview to be inherently coercive. *Boydston Electric, Inc*., 331 NLRB 1450 fn. 5 (2000). However, in circumstances where the applicants are making their union affiliation obvious, the Board does not necessarily view certain questioning as coercive. *Facchina Construction Co.,* 343 NLRB No. 98 (2004). Here, many of the journeymen in the group, and McMath himself, were wearing hardhats adorned with union insignia, thus making it obvious that they were affiliated with, and supporters of, the Union. Under these circumstances, with the group making their union affiliation patently obvious, Butler's single question, asking, if "you all are with the union?" was not coercive.

C. Refusal to Hire and Refusal to Consider for Hire

The complaint alleges a failure to hire, and a failure to consider for hire, nine named individuals.[30] The Board, in *FES*, 331 NLRB 9, 12 (2000), supp. decision 333 NLRB 66 (2001), enfd. 301 F.3d 83 (3d Cir. 2002), set forth the following test for a failure to hire allegation (footnotes and citations excluded):

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[29] At trial, I granted counsel for the General Counsel's motion to amend the complaint by withdrawing complaint pars. 11(a) and (b), which alleged that in early April, Butler coercively interrogated and interfered with employees.

[30] Counsel for the General Counsel asserts in his brief that 10 union bricklayers appeared at the jobsite on January 26, and that the failure to hire and consider allegations applied to these 10. But the complaint only names nine such individuals, and I have found that the evidence only supports eight individuals as being in this group. Based on his brief, counsel for the General Counsel, apparently, includes Gary McQuaid and Darrel Nichols in this group. The complaint does not mention McQuaid, and I have found that there was no evidence that either McQuaid or Nichols was present on January 26. However, I have found that Nichols visited the jobsite with the McMath group seeking work on January 29, and have, thus, included him in the group of applicants.

> To establish a discriminatory refusal to hire, the General Counsel must, under the allocation of burdens set forth in *Wright Line*[31] first show the following at the hearing on the merits: (1) that the respondent was hiring, or had concrete plans to hire, at the time of the alleged unlawful conduct; (2) that the applicants had experience or training relevant to the announced or generally known requirements of the positions for hire, or in the alternative, that the employer has not adhered uniformly to such requirements, or that the requirements were themselves pretextual or were applied as a pretext for discrimination; and (3) that antiunion animus contributed to the decision not to hire the applicants. Once this is established, the burden will shift to the respondent to show that it would not have hired the applicants even in the absence of their union activity or affiliation. If the respondent asserts that the applicants were not qualified for the positions it was filling, it is the respondent's burden to show, at the hearing on the merits, that they did not possess the specific qualifications the position required or that others (who were hired) had superior qualifications, and that it would not have hired them for that reason even in the absence of their union support or activity.

Here, while Butler told Lynch on January 29 that Respondent was not hiring off the street (to avoid hiring union members) there is ample evidence that Respondent was hiring at the times the group of union journeymen, led by McMath, visited the site and attempted to apply for work[32] with Respondent. Thus, on January 29, when Lynch asked Butler whether he wanted Lynch to bring some of his friends,[33] who had finished other jobs, to work at the jobsite, Butler told Lynch to bring the men in. When Fraim reported to the jobsite with Lynch on January 30, Butler put him to work for Respondent. There is also evidence that Respondent hired bricklayer Michael Strouse on February 5, although the record contains no detail as to how Strouse came to be hired. Finally, Respondent hired Lynch on January 21, and Hecht on January 22, albeit without knowledge of their union affiliation. I, thus, conclude that on January 26 and 29, when the group of union journeymen visited the jobsite and attempted to apply for work with Respondent, that Respondent was actively hiring bricklayers for the job.[34]

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[31] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

[32] I credited McMath that on January 26 Butler told him that, "not a man on this site filled out an application." Further, Respondent hired Lynch and Hecht without application. I, thus, conclude that Respondent maintained no formal job application process, at least in respect to the jobsite involved here.

[33] At this time, Respondent did not know Lynch was affiliated with the Union, and Lynch said nothing about the union affiliation of his friends.

[34] Even if I had concluded that there was insufficient evidence that Respondent was actively hiring at the time of its refusal to hire union affiliated applicants, I would still have concluded, based on evidence cited in the decision, that Respondent had concrete plans to hire and then decided not to hire because the applicants were known union adherents. Thus, counsel for the

Continued

I, further, conclude that the nine individuals in the group which visited the jobsite on January 26 and 29, and attempted to apply for work with Respondent, were qualified to perform the work of bricklayers and, hence, had experience or training relevant to the generally known requirements of the positions Respondent was hiring for, and had hired for. Thus, the credited evidence, including the testimony of Union President McMath demonstrates that McMath and the eight other individuals who attempted to apply for work with Respondent on January 26 and 29, were bricklayer journeymen, with significant work experience similar to that of Lynch, whom Respondent, in fact, had hired unaware of his affiliation with the Union.

Finally, the record is replete with evidence of Respondent's antiunion animus. This includes the various 8(a)(1) violations which I have concluded were committed by Butler and Dane, including telling the group of putative job applicants led by McMath that if they threw away their union cards Respondent might hire them, telling its bricklayer employees that they were not to speak to jobsite visitors from the Union, and telling its own employees that the jobsite was nonunion and Respondent was not going to hire off the street because it didn't want any union employees. I also conclude that Butler's deliberate misleading of McMath and the group of job applicants by referring them to the general contractor for job applications, with full knowledge that the general contractor had nothing to do with Respondent's hiring decisions, is further evidence of Respondent's militant antiunion animus.

Inasmuch as I have, thus, concluded that the General Counsel has met its *FES*, supra, burden of demonstrating that Respondent was hiring, that the putative applicants had training and experience relevant to the positions, and that antiunion animus contributed to Respondent's failure to hire McMath and the other eight journeymen in the group, the burden shifts to Respondent "to show that they did not possess the specific qualifications the position required or that others (who were hired) had superior qualifications, and that it would not have hired them for that reason even in the absence of their union support or activity." Respondent's failure to appear for the hearing has precluded it from meeting the burden, and the record contains no evidence from which I could conclude that McMath and the other eight journeymen did not possess the specific qualifications the position required or that others (who were hired) had superior qualifications, and that Respondent would not have hired them for that reason even in the absence of their union support or activity. Accordingly, I conclude that Respondent violated Section 8(a)(3) of the Act by its refusal since January 26 to hire the union affiliated job applicants in the McMath group.

Counsel for the General Counsel has also met its burden to demonstrate a discriminatory refusal to consider for hire. In *FES*, supra at 15, the Board set forth this test:

> To establish a discriminatory refusal to consider, pursuant to *Wright Line*, supra, the General Counsel bears the burden of showing the following at the hearing on the merits: (1) that the respondent excluded applicants from a hiring process; and that (2) that antiunion animus contributed to the decision not to consider the applicants for employment. Once this is established, the burden will shift to the respondent to show that it would not have

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General Counsel would still have established a discriminatory refusal to hire. See, *FES*, supra at fn. 7.

> considered the applicants even in the absence of their union activity or affiliation.

Butler's referral of the McMath-led group of union journeymen, seeking to apply with Respondent on January 26, to a general contractor that had nothing to do with Respondent's hiring, and Butler's and Dane's comments to Respondent's employees that Respondent would not hire union members, demonstrates that Respondent excluded McMath and the seven other journeymen in his group on January 26 from its hiring process. Respondent's failure to appear at the hearing precluded it from meeting its resultant burden to show it would not have considered the union applicants even in the absence of their union affiliation. Accordingly, I conclude that Respondent violated Section 8(a)(3) by discriminatorily refusing to consider McMath and the seven other journeymen in the January 26 group for hire.

D. Failure to Pay Employee Michael Strouse

The complaint alleges, as an 8(a)(5) violation, that Respondent, without prior notice to the Union, failed and refused to pay Strouse for work performed from March 29 to April 13, and that such action constituted a unilateral change. Section 8(d) of the Act, which defines the duty to bargain collectively imposed by Section 8(a)(5), requires an employer to "meet … and confer in good faith [with the collective-bargaining representative] with respect to wages, hours and other terms and conditions of employment." *NLRB v. Katz*, 369 U.S. 736, 742–743 (1962). Items falling within the language of Section 8(d) are mandatory subjects of bargaining. *NLRB v. Borg-Warner Corp*., 356 U.S. 342, 349 (1958). Accordingly, an employer is prohibited from changing matters related to wages, hours or terms and conditions of employment without first affording the employees' bargaining representative a reasonable and meaningful opportunity to discuss the proposed alterations. *NLRB v. Katz*, supra at 743. Further, in order for a bargaining obligation to arise, any such unilateral change must be material, substantial, and significant. *Alamo Cement Co*., 281 NLRB 737, 738 (1986). Wages fall within the language of Section 8(d), and the Board has held that a failure to pay wages constitutes a unilateral change. *Cyclone Fence, Inc*., 330 NLRB 1354, 1355 (2000).

Here, counsel for the General Counsel has demonstrated, and I have found, that Respondent has failed to pay wages to its employee Strouse subsequent to the Board conducted election of April 14[35], won by the Union, and also subsequent to the election reneged on an earlier wage payment to Strouse by stopping his paycheck. Respondent engaged in these actions without prior notice to or bargaining with the Union. No evidence was introduced as to whether Respondent paid other employees following the election, or how many employees Respondent employed on the jobsite as of its last day, April 13. Nevertheless, the Board has held that a unilateral change which affects only a single employee, can still be material, substantial, and significant.

> "[W]e note that the Board has held in some prior cases, without any analysis or rationale, that a change in terms or conditions of

[35] I note that the Board's certification issued on April 22, but the election was conducted on April 14. Because the Board eventually certified the unit, Respondent's bargaining obligation dates back to the election. See, *Mike O'Connor Chevrolet-Buick-GMC Co*., 209 NLRB 701, 703 (1974), enf. den. on other grounds 512 F.2d 684 (8th Cir. 1975), and *Livingston Pipe & Tube, Inc. v. NLRB*., 987 F.2d 422, 428 (7th Cir. 1993).

> employment affecting only one employee does not constitute a violation of Section 8(a)(5). [Citations omitted] We find that this holding, which would require the dismissal of the complaint in this case, is erroneous as a matter of law, and we overrule those cases to the extent inconsistent with our decision in this case." *Millwrights, Conveyors Machinery Erectors Local Union No. 1031*, 321 NLRB 30, 31 (1996).

I, thus, conclude that Respondent's failure to pay Strouse constituted a unilateral change in violation of Section 8(a)(5).

E. Failure to Meet for Bargaining

I have found, above, that on April 22, by Adam's letter to Respondent and Respondent's counsel, and on May 4, by Adam's voice mail message to Respondent's attorney, the Union requested to meet with Respondent for collective bargaining. I, further, have found that Respondent has never positively responded to the Union's request to meet for bargaining.[36] The obligation to bargain "encompasses the affirmative duty to make expeditious and prompt arrangements within reason, for meeting and conferring." *J.H. Rutter-Rex Manufacturing Co.,* 86 NLRB 470 (1949). Respondent's failure to agree to meet or to respond to the Union's request to meet for bargaining, violates Section 8(a)(5). *The Little Rock Downtowner, Inc*., 145 NLRB 1286 (1964), enfd. 341 F.2d 1020 (8th Cir. 1965).

F. Information Requests

When a union requests information which is relevant and reasonably necessary to the union's performance of its responsibilities, an employer has a duty to provide the information. *Allied Mechanical Services*, 332 NLRB 1600 (2002). The standard for determining the relevance of the requested information is a liberal one, and it is necessary only to establish "the probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." Id., citing *NLRB v. Acme Industrial Co.,* 385 U.S. 432, 437 (1967). Where the information requested involves the terms and conditions of employment within the bargaining unit, the standard of relevance is very broad and no specific showing of relevance is normally required. *Ohio Power Co*., 216 NLRB 987 (1975). However, when a union seeks information concerning matters outside the bargaining unit, the information is not presumptively relevant, and the union is required to make a showing of relevancy and necessity, although the burden is not an exceptionally heavy one, requiring only that a showing be made of a "probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *Frito-Lay, Inc.*, 333 NLRB 1296 (2001), quoting *NLRB v. Acme Industrial Co*., supra.

Here, I conclude that all of the Union's information requests alleged in the complaint, including all the items set forth in Adam's letters to the Respondent of April 22, April 30, May 4, and August 27, with one exception, deal with matters directly involved with the bargaining unit and no specific showing of relevance is required. Respondent's failure to provide the information, or even to respond to the Union's information requests, violates Section 8(a)(5). However, item A9, contained in Adam's letter of April 22 to Respondent, seeking information as

[36] Other than Quist's May 4 voice mail message to Adam, to the effect that, essentially, there was nothing to bargain over.

to the names, addresses, and nature of other businesses operated by owners of Respondent, seeks information outside the bargaining unit. Neither the Union nor counsel for the General Counsel produced any evidence or submitted any argument as to why this information is relevant or would be of use to the Union. Accordingly, I conclude that Respondent's failure to respond to this single question does not violate Section 8(a)(5). *Bohemia, Inc*., 272 NLRB 1128, 1129 (1984).

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union, at all material times since April 14, 2004, has been the exclusive bargaining representative of all of Respondent's employees in the following appropriate unit for bargaining: All full-time and regular part-time bricklayers employed by Respondent at or out of its facility in Spokane, Missouri; but excluding office clerical employees, operators, carpenters, laborers, managerial employees, and guards and supervisors as defined in the Act.

4. By failing and refusing to furnish the Union with information requested in its letters of April 22, April 30, May 4, and August 27, 2004, by failing and refusing to meet with the Union as the exclusive collective-bargaining representative of an appropriate collective-bargaining unit of its employees, and by failing and refusing to pay its employee Michael Strouse for work performed for Respondent and thereby unilaterally changing established terms and conditions of employment, the Respondent has failed to fulfill its statutory obligations and has thereby engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

5. By refusing to hire, or consider for hire, from January 26 to April 13, 2004, Nelson McMath, Casey Rapelje, Wendell Albertson, Bob Bowinski, Robert Taylor, Don Van Arsdelan, Tony Marr, and Guy Perriard, and Darrel Nichols from January 29 to April 13, 2004, Respondent has been discriminating in regard to the hire or tenure or terms and conditions of employment of employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(1) and (3) of the Act.

6. By prohibiting employees from speaking to union representatives or members, informing employees that it was not going to hire union members, telling job applicants that they would be able to get jobs if they disposed of their union cards, and informing employees and job applicants that police would be called if union members applying for jobs did not leave the jobsite, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

7. The unfair labor practices set out in paragraphs 4, 5, and 6, above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has violated Sections 8(a)(1), (3), and (5) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondent illegally failed and refused to hire nine individuals, and that counsel for the General Counsel alleged and proved that Respondent hired two other individuals during the relevant time period, I conclude that a compliance proceeding should be used to determine which of the applicants would have been hired for the openings, and the specifics of Respondent's instatement and backpay liability to said individuals. See, *FES*, supra at 14, where the Board instructed, "Where the number of applicants exceeds the number of available jobs, the compliance proceeding may be used to determine which of the applicants would have been hired for the openings." See also *Stamford Taxi*, 332 NLRB 1372, 1376 (2000). For the two discriminatees who compliance determines should have been hired, they shall also be made whole for any wages and benefits lost as a result of the refusal to hire them as computed in *F.W. Woolworth, Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987). Inasmuch as the Respondent is engaged in the construction industry, I shall further recommend, in accord with *Dean General Contractors*, 285 NLRB 573 (1987), that the Board leave to the compliance stage of this proceeding the determination of whether the discriminatees would have continued in the Respondent's employment after completion of the jobsite here involved.

As to the remaining discriminatees, they are entitled to a refusal to consider remedy. The appropriate remedy for a refusal to consider violation is a cease-and-desist order; an order to place the discriminatees in the position they would have been in absent discrimination, for consideration for future openings and to consider them for the openings in accord with nondiscriminatory criteria; and an order to notify the discriminatees, the Charging Party, and the Regional Director of future openings in positions for which the discriminatees applied or substantially equivalent positions. *Stamford Taxi*, supra.

The Respondent having unlawfully failed to bargain with the Union, it must bargain in good faith, upon request, with the Union as to the appropriate unit, provide the requested relevant information as ordered below, and reimburse Michael Strouse for wages lost as a result of its illegal unilateral change, as computed in *F. W. Woolworth,* supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER[37]

The Respondent, Robert Crowell, d/b/a Armco Masonry, Spokane, Missouri, a sole proprietorship, its officers, agents, successors, and assigns, shall

1. Cease and desist from refusing to bargain with Local 9 Michigan, International Union of Bricklayers and Allied Craftworkers, AFL–CIO (Union) by the following actions in respect to the appropriate unit (Unit): All full-time and regular part-time bricklayers employed by the Respondent at or out of its facility in Spokane, Missouri; but excluding office clerical employees, operators, carpenters, laborers, managerial employees, and guards and supervisors as defined in the Act.

(a) Refusing to meet with the Union.

[37] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Refusing to timely furnish the Union with information requested and needed in the performance of its duties as exclusive collective-bargaining representative.

(c) Making unilateral changes in respect to the payment of its employees for work performed or in other terms and conditions of employment that are mandatory subjects of bargaining without prior notice to or bargaining with the Union as the exclusive representative of the bargaining unit.

2. Cease and desist from

(a) Advising employees they are not to speak to or meet with representatives or members of the Union or any other labor organization.

(b) Informing employees or job applicants that it will not hire individuals affiliated with the Union or any other labor organization, or that the only way such individuals would be hired is if they disposed of their union cards.

(c) Advising employees or job applicants affiliated with the Union that Respondent would call the police to remove such individuals from a jobsite.

(d) Failing or refusing to hire or to consider for hire individuals affiliated with the Union or any other labor organization.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

3. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Furnish the Union with the information as to the Unit as set forth in paragraph 20 of the second consolidated amended complaint and requested by letter from the Union on the following dates: April 22, April 30, May 4, and August 27, 2004, except the names, addresses, and nature of other businesses operated by owners of Respondent.

(b) On request, bargain with the Union as the exclusive bargaining representative of the employees in the Unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(c) Make Michael Strouse whole, consistent with the Remedy section, for any economic loss suffered as a result of Respondent's unilateral change and resultant failure to pay Strouse by withholding or stopping his paychecks, including any stopped check fee which Strouse was required to pay.

(d) Offer instatement to two of the following employees, whose identity is to be determined in the compliance stage of this proceeding, consistent with the Remedy section, to bricklayer positions for which they are qualified, or to substantially equivalent positions, and make them whole for any loss of earnings and other benefits sustained by reason of the discrimination against them, in the manner set forth in the remedy section of this decision: Nelson McMath, Casey Rapelje, Wendell Albertson, Bob Bowinski, Robert Taylor, Don Van Arsdelan, Tony Marr, Darrel Nichols, and Guy Perriard. As set forth in the Remedy section, the issue of whether the discriminatees would have continued in the Respondent's employment after completion of the jobsite here involved will also be determined in the compliance stage.

(e) Consider the remaining discriminatees, above, for any future openings that may arise, in accord with nondiscriminatory criteria, and notify the discriminatees, the Union, and the Regional Director for Region 7 of such openings in bricklayer positions for which they are qualified, or for substantially equivalent positions.

(f) Rescind its unilateral change of failing to pay Unit employees for work performed, or stopping their paychecks.

(g) Remove from its files any reference to the unlawful failure to hire two discriminatees, whose identity is to be determined in the compliance stage of this proceeding, and notify them in writing that this has been done and that the refusal to hire them will not be used against them in any way.

(h) Remove from its files any reference to the unlawful failure to consider for employment the remaining discriminatees, whose identity is to be determined in the compliance stage of this proceeding, and notify them in writing that this has been done and that the refusal to consider them for employment will not be used against them in any way.

(i) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under terms of this Order.

(j) Mail to all former employees employed by the Respondent at any time after January 25, 2004, and post at its office in Spokane, Missouri, and jobsites, copies of the attached notice marked "Appendix."[38] Such notice shall be mailed to the last known address of each former employee. Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be mailed within 14 days after service by the Region and shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(k) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. March 22, 2005

Mark D. Rubin
Administrative Law Judge

[38] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVE YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail or refuse to hire, or to consider for hire, or to accept applications from, applicants for employment because they are members of Local 9 Michigan, International Union of Bricklayers and Allied Craftworkers, AFL–CIO (Union), or any other labor organization.

WE WILL NOT inform employees or job applicants that individuals will not be hired because they are affiliated with a union, or will only be hired if they dispose of their union cards.

WE WILL NOT instruct employees that they are not to speak to or meet with representatives or members of a union.

WE WILL NOT inform our employees that we will call the police to expel union representatives or members from our jobsites.

WE WILL NOT fail and refuse to bargain with the Union, which is the designated exclusive collective-bargaining representative of our employees in the appropriate unit.

WE WILL NOT fail or refuse to provide the Union with requested relevant information.

WE WILL NOT unilaterally discontinue paying our employees wages or stopping their paychecks without providing the Union with notice and an opportunity to bargain about the decision and its effects.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer instatement to two of the following individuals, whose identity it to be determined in the compliance stage of this proceeding, to bricklayer positions, or to substantially equivalent positions, and make them whole for any loss of earnings and other benefits sustained by reason of the discrimination against them, plus interest: Nelson McMath, Casey Rapelje, Wendell Albertson, Bob Bowinski, Robert Taylor, Don Van Arsdelan, Tony Marr, Darrel Nichols, and Guy Perriard.

WE WILL consider the remaining discriminatees for any future openings as bricklayers or substantially equivalent positions, in accord with nondiscriminatory criteria, and notify the discriminatees, the Union, and the Regional Director for Region 7 of such openings.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful refusal to hire and consider for hire the individuals named above, and within 3 days thereafter notify these individuals that this has been done and that our unlawful conduct will not be used against them in any way.

WE WILL, on request, bargain in good faith with the Union as to the bargaining unit, and reduce to writing and sign any agreement reached as a result of bargaining.

WE WILL reinstate our policy of paying employees for work performed, and make whole Michael Strouse for any loss of earnings and benefits sustained because of our failure to provide him with his wages and by stopping his paycheck, including any stopped check fee he was required to pay.

WE WILL provide the Union with the information it requested.

ROBERT CROWELL, d/b/a ARMCO MASONRY
a sole proprietorship

_____
(Employer)

Dated_____ By_____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov

477 Michigan Avenue, Room 300
Detroit, MI 48226

Telephone: (313) 226-3200
Hours of Operation: 8:15 a.m. to 4:45 p.m.

HEARING IMPAIRED PERSONS MAY CALL
1-866-315-NLRB (1-866-315-6572)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 313-226-3244.